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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON
9 AT YAKIMA

10 JOSEPH A. PAKOOTAS, an
11 individual and enrolled member of the
12 Confederated Tribes of the Colville
13 Reservation; DONALD R. MICHEL,
14 an individual and enrolled member of
15 the Confederated Tribes of the Colville
16 Reservation; and the
17 CONFEDERATED TRIBES OF THE
18 COLVILLE RESERVATION ,

19 Plaintiffs.

20 and

21 STATE OF WASHINGTON ,

22 Plaintiff-Intervenor,

23 v.

24 TECK COMINCO METALS, LTD., a
25 Canadian corporation ,

26 Defendant.

NO. CV-04-0256-LRS

DECLARATION OF PAUL J.
DAYTON IN SUPPORT OF
PLAINTIFF THE
CONFEDERATED TRIBES OF
THE COLVILLE
RESERVATION'S RESPONSE
TO DEFENDANT'S MOTION IN
LIMINE TO EXCLUDE NEW
EVIDENCE AND LEGAL
THEORIES

DECLARATION OF PAUL J. DAYTON IN
SUPPORT OF PLAINTIFF THE CONFEDERATED
TRIBES OF THE COLVILLE RESERVATION'S
RESPONSE TO DEFENDANT'S MOTION IN
LIMINE TO EXCLUDE NEW EVIDENCE AND
LEGAL THEORIES - 1

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1
2 PAUL J. DAYTON certifies and states as follows:

3 1. I am one of the attorneys for the Plaintiffs the Confederated Tribes of
4 the Colville Reservation. I have personal knowledge of the facts contained in this
5 declaration and am competent to testify.

6 2. I received a copy of the EPA/Teck Agreement on Consent (exh.
7 5177) on November 21, 2015.

8 3. Attached as **Exhibit A** is a true and correct copy of a letter dated
9 December 3, 2015 from Richard Albright, Director, Office of Environmental
10 Cleanup to Gary Passmore, Director, Office of Environmental Trust and Peter
11 Rozee, Senior Vice President, Teck Resources Limited.

12 I certify under penalty of perjury under the laws of the United States and the
13 State of Washington that the foregoing is true and correct.

14
15 Signed and dated this December 3, 2015 at Seattle, Washington.

16
17 By: /s/ Paul J. Dayton
18 Paul J. Dayton, WSBA No. 12619
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25 DECLARATION OF PAUL J. DAYTON IN
26 SUPPORT OF PLAINTIFF THE CONFEDERATED
TRIBES OF THE COLVILLE RESERVATION'S
RESPONSE TO DEFENDANT'S MOTION IN
LIMINE TO EXCLUDE NEW EVIDENCE AND
LEGAL THEORIES - 2

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CERTIFICATE OF SERVICE

I hereby certify that on December 3, 2015, I electronically filed the foregoing to the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties of record.

SHORT CRESSMAN & BURGESS PLLC

By /s/ Paul J. Dayton
Paul J. Dayton, WSBA No. 12619

DECLARATION OF PAUL J. DAYTON IN
SUPPORT OF PLAINTIFF THE CONFEDERATED
TRIBES OF THE COLVILLE RESERVATION'S
RESPONSE TO DEFENDANT'S MOTION IN
LIMINE TO EXCLUDE NEW EVIDENCE AND
LEGAL THEORIES - 3

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EXHIBIT A



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10

1200 Sixth Avenue, Suite 900
Seattle, WA 98101-3140

OFFICE OF
ENVIRONMENTAL
CLEANUP

December 3, 2015

Mr. Gary Passmore
Director, Office of Environmental Trust
The Confederated Tribes of the Colville Reservation
P.O. Box 150
Nespelem, Washington 99155

Mr. Peter Rozee
Senior Vice President, Commercial and Legal Affairs
Teck Resources Limited
501 North Riverpoint Blvd.
Spokane, Washington 99202

Dear Mr. Passmore and Mr. Rozee:

The Confederated Tribes of the Colville Reservation (Tribes) have expressed interest in obtaining testimony from the Environmental Protection Agency (EPA) in support of their claim for recovery of response costs in *Pakootas v. Teck Cominco Metals, Ltd.* Teck expressed concerns about EPA's participation in the litigation in support of the Tribes. It is EPA's general policy not to provide testimony in litigation to which EPA is not a party. Therefore, EPA does not presently plan to provide such testimony. Having made this decision, I want to recognize the contributions that both Teck and the Tribes have made toward addressing environmental and human health issues at the Site.

Teck has shown a commitment to the Site by expending significant sums of money to conduct the remedial investigation and feasibility study (RI/FS), including the collection of data that will be included in the administrative record for EPA's remedy decision. Teck has also recently performed time critical removal actions at the Site.

The Tribes have collected data that has informed studies under the RI/FS and will be included in the administrative record for EPA's remedy decision. The Tribes have also invested substantial resources in securing a liability determination that EPA will rely on to pursue cleanup of the Site under CERCLA.

EPA looks forward to continuing to work with the Tribes and Teck to investigate and clean up the Site.

Sincerely,

A handwritten signature in black ink, appearing to be "R. Albright", written over a horizontal line.

Richard Albright, Director
Office of Environmental Cleanup

cc: Dennis Faulk, EPA
Kris McCaig, Teck American Incorporated